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Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

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JUSTIN COX,
Petitioner

vs.

STATE OF CALIFORNIA,
Respondent

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**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA**

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# PETITION FOR WRIT OF CERTIORARI

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## PETITION FOR CERTIORARI

## QUESTION PRESENTED FOR REVIEW

Whether a prosecutor can knowingly present falsified evidence to a State grand jury – in order to fulfill the required elements of the alleged crime – violates the Due Process clause of the Fourteenth Amendment?

## LIST OF PARTIES IN COURT BELOW

Michael A. Ramos, District Attorney
Larry F. Roberts, James R. Secord, Deputy
District Attorneys of San Bernardino County
Edmund Brown,
Attorney General of the State of California
Alvin Cox
Justin Cox
Randi Fjaeran
John Carr

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## PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Justin Cox, respectfully petitions for a writ of certiorari to review the decision of the California Supreme Court in People v. Cox, No. S171576.

## CITATIONS OF OPINIONS AND ORDERS IN CASE

The Superior Court for San Bernardino County, in case number FSB051477, denied Justin Cox's renewed motion to dismiss pursuant to California Penal Code Sections 996, 939.71 and 939.6 on February 20 and 23, 2009. The California Court of Appeals for the Fourth District, Second Division, denied Justin Cox's petitions for mandate on March 20, 2009, in docket numbers E047857 and E047859. The Supreme Court of California denied the petition for review of the Court of Appeals decision on June 15, 2009, at docket number S171576 after ordering the People to Respond to Petitioner's argument. The orders of these three courts are incorporated as if fully set forth in the Appendix.

## JURISDICTIONAL STATEMENT

The Supreme Court of California denied petitioner's petition for review on June 15, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment, Section 1, to the United States Constitution provides, in relevant part, "nor shall any State deprive any person of life, liberty, or property, without due process of law...."

## STATEMENT OF THE CASE

The facts necessary to place in their setting the question now raised can be briefly stated:

### I. COURSE OF PROCEEDINGS

This case began when the San Bernardino County Grand Jury returned a 27-count indictment against defendants John Carr (Carr), Randi Fjacran (Fjacran), Alvin Cox (Alvin), and Justin Cox (Justin). The indictment alleged crimes arising from eight different transactions. In each of these transactions, the defendants learned about property that was in default on property taxes. Typically, one or more of the defendants contacted the property owner in defaulted status. Some of these property owners were not aware of the tax default or the property and, but for being contacted by the defendants, most may not have even known the property in question was due to be auctioned in the immediate future because the properties had been delinquent for up to 20 years.

It is not disputed that the owners agreed to voluntarily sell their property to defendants for an agreed-upon price. The key to the alleged criminality of these transactions was the fact that,

after a tax sale, whereby all taxes have been paid and all liens satisfied, there may be excess proceeds available for the owner to receive (if the county can locate said owner). In its description of events, the appellate court in California reflected in its prior opinion this key fact in its statement of the facts:

> The owners were not informed of the possibility of recovering proceeds from the tax sale that exceed the amount of taxes and fees due. The owners agreed to sell their property to defendants for a nominal amount, unaware that by doing so the owner would be unable to claim any excess proceeds from the sale.

In other words, the central element of the crimes charged—the only basis on which the appellate court reinstated eight of the 27 counts after the trial court dismissed all but one of them—would be that some sort of fraudulent misrepresentation about these excess proceeds took place. Thus, equally, one key to the violations of due process that occurred here is that some of the evidence suggesting that defendants somehow misrepresented the availability of excess proceeds—the testimony of the alleged victims, themselves—was perjured, and that perjury was not corrected by the prosecution with the evidence in its possession at the time of the indictment.

When the taxes on real property in San Bernardino County are delinquent for five years, the county places the property for sale by

auction.[1] In 2004, the county held two such auctions: the first in May and the second in August. The May 2004 auction occurred between May 17 and May 28. However, the closing date for the auction of particular properties varied. The last date by which taxes could be paid, thereby preventing the auction of a property, was May 14, 2004. If a property did not sell at the May 2004 auction, it was placed for sale at the August 2004 auction. The opening bid for property that is placed for sale a second time is set at an amount the tax collector deems appropriate and completely at its discretion, at times as low as $100. Any proceeds received from the tax sale in excess of the amount due for taxes, encumbrances, and costs of sale are referred to as "excess proceeds." The excess proceeds are held for at least 12 months to allow time for people to file a claim to the money. A claimant must have been a "party of interest," such as the property owner or a lien claimant, at the time of the sale. The claims of lien holders, including trust deed beneficiaries, have priority over the claims of property owners.

Defendants purchased interests in some of these properties put up for tax sale in 2004. As outlined below, the only evidence presented to the grand jury of criminality in any of these transactions arose from evidence the prosecutor procured concerning these transactions.

Defendants moved to dismiss each of the 27 counts pursuant to section 995 of the Penal Code,

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[1] This description is taken almost verbatim from the decision of the appellate court, reinstating some of the counts of the indictment.

which provides that an indictment shall be set aside upon motion by a defendant when "the defendant has been indicted without reasonable or probable cause." Justin Cox also filed a motion to dismiss pursuant to section 939.71, which provides that a failure by the prosecutor to present exculpatory evidence to the grand jury is grounds for dismissal. The trial court granted Fjaeran's motion in its entirety. The court granted the section 995 motions by the other defendants as to counts 2 through 27, and denied the motions as to the conspiracy count against the remaining three defendants, finding there was insufficient evidence of false representations or detrimental reliance justifying these counts.

The prosecution appealed and on November 8, 2007, the Court of Appeals reinstated seven of the dismissed counts. The prosecutor then filed an amended indictment with eight counts. Count 1 charged conspiracy to cheat and defraud Guignet, Berman, Sampson, Watts, DeGraffereid, Wallen, and Guggiana. Counts 2-4 pertained to Guignet, Count 5 to Sampson, Counts 6 and 7 to Watts, and Count 8 to Guggiana. Thereafter, defendants, including petitioner, renewed their motions to dismiss under California Penal Codes §§ 939.71 and 995. That is, the defendants moved to dismiss both because the evidence was insufficient to sustain an indictment and because the prosecution denied them due process by engaging in a conscious strategic decision to suppress the exculpatory evidence.

In briefing those motions, petitioner filed one brief in particular detailing arguments that the prosecutor's misconduct before the grand jury was a violation of petitioner's rights to due process

of law. In that brief, petitioner noted that despite the fact that arguments concerning violations of due process and the state rules requiring disclosure of exculpatory evidence had been made more than once in the case, no court had ever ruled on the motions concerning exculpatory evidence.

In February 2009, the trial court, however, denied those motions, believing it was partly constrained to do so by the Court of Appeal's earlier decision concerning the lack of detrimental reliance. In so doing, it still did not address the claims that the prosecution knowingly presented falsified evidence. The Court of Appeal summarily denied the defendants' petition for writ of mandate, and in turn, so did the Supreme Court of the State of California.

## II. RELEVENT FACTS CONCERNING THE UNDERLYING ISSUE OF VIOLATION OF DUE PROCESS

While this Court decided several years ago that judicial supervisory power over grand juries is limited and does not extend the power to create procedural rules requiring prosecutors to reveal all exculpatory evidence to a grand jury, see *United States v. Williams*, 504 U.S. 36 (1992), this case raises the compelling issue of whether due process requires an indictment be dismissed when a prosecutor knowingly utilizes false evidence and suppresses key evidence without which no indictment could have rationally been returned. Though the logical answer is that principles of due process require States to respect the "conception of fundamental justice," *Foster v. People of State of*

*Illinois*, 332 U.S. 134, 136 (1947), the decisions from lower courts are divergent and require the intervention of this court.

In evaluating this matter, the most important single characteristic of the prosecutor's actions that must be borne in mind is that the prosecutor, appearing before the grand jury unchecked by judicial oversight, presented falsified evidence without which the elements of the charged crime could not have been established. Moreover, the prosecution not only failed to present exculpatory evidence, but made a conscious strategic decision to mislead the grand jury when it implied that no exculpatory evidence existed. While failure to present exculpatory evidence may not be a violation of due process under this court's current holding in *Williams*, lying to the grand jury about that fact surely is. Not only is such an action unethical but it subverts the very point of the grand jury process. "[The] grand jury [must] remain free to pursue its investigations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witness called before it." *United States v. Williams*, 504 U.S. 36, 48-49 (1992), quoting *United States v. Dionisio*, 410 U.S. 1, 17-18 (1973). That includes the external interference of the prosecutor suborning perjury, falsifying evidence, and manipulating testimony to persuade the grand jury to act in a manner favorable to the prosecutor. As this Court stated in its majority opinion in *Williams*, "the whole theory of [the grand jury's] function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people." 504

U.S. at 47, citing *Stirone v. United States*, 361 U.S. 212, 218 (1960); *Hale v. Henkel*, 201 U.S. 43, 61 (1906); G. Edwards, The Grand Jury 28-32 (1906). Once the government, in the person of the prosecutor, is allowed to knowingly manipulate the evidence, the government will also be allowed to manipulate the grand jury itself. Rather than the grand jury being a buffer or reasonably-minded referee to the prosecution, the grand jury becomes the prosecutor's personal puppet, acting solely at his direction. This subverts the entire grand jury concept and violates fundamental concepts of justice. When a grand jury is subverted by such prosecutorial misconduct, an accused is denied the process due him or her.

Despite what seems to be an obvious conclusion that this form of prosecutorial misconduct is a violation of due process, there is real confusion and dissension among the lower courts of this nation about the effect of such prosecutorial misfeasance. It is therefore incumbent on this Court to address that confusion and make it clear that due process must be respected.

## ARGUMENT FOR ALLOWANCE OF WRIT

### I. THE PROSECUTOR MANIPULATED THE EVIDENCE, EFFECTIVELY MISLEADING THE GRAND JURY IN ORDER TO DENY DUE PROCESS

The first act of the prosecutor to subvert the grand jury and manipulate the evidence before it came with his own promises and representations

about his own obligations and intentions. The prosecution, appearing before the grand jury, made a conscious strategic decision to answer the grand jury's questions regarding exculpatory evidence as follows:

> I can tell you this. If it's available to us, if we have it, you are going to see it. And if you don't see it, it's because we don't have it, we couldn't find it, or it doesn't exist. ... I am under an obligation to tell you every bit of information I know that is both damaging to the suspects and if something that's not damaging to the suspects, I have to tell you that too.

Grand Jury Reporter's Transcript at 44:18-25. Exonerating evidence was in the prosecution's possession. Obviously, the grand jury deemed Mr. Roberts' statements as truthful, and naturally assumed he honored his duty of disclosure. The grand jurors believed the prosecution rather than suspecting that exculpatory and exonerating evidence existed.

Thus, to the extent that any of the evidence outlined below would be exculpatory, the prosecutor lied to the grand jury in order to mislead them to believe no such evidence existed. There was substantial exculpatory evidence not presented to the grand jury, as described at length in the various motions to dismiss, but in this petition for certiorari, the focus must be on the willful presentation of false evidence in violation of due process. An example of the prosecutor's willful misconduct and presentation of false evidence can be found in the testimony

about the transaction which four of the eight remaining counts address – the purchase from Betty Guignet.

A. The Guignet Perjury (Counts 1-4)

One of the transactions, in which the prosecutor relied on falsified testimony to obtain indictment, concerned certain "raw land" in Apple Valley owned by Betty Guignet and her nephew Fred Avery.[2] After they had not paid taxes on that land for several years, the San Bernardino County Tax Collector sold the property at the May 2004 auction. Critically, neither Guignet nor Avery received notice of the sale from the tax collector, and they were unaware of the sale. The opening bid on the Guignet-Avery property was $8,450. The last day for bids was May 21, 2004. Guignet and Avery purchased the land for $75,000 in 1990 or 1991.

In the afternoon of May 19, 2004, Justin called Avery and informed him of the tax sale. Justin offered to buy the land. After the aunt and nephew discussed the offer alone, they agreed to sell and called Justin to tell him so. The next day, at Avery and Guignet's residence, Alvin Cox paid them $2,500 for a grant deed.

None of this was, or could be, criminal unless, according to the state appellate court below, the petitioner made "a false pretense or

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[2] Of the eight counts of the indictment remaining in this case, four concern this transaction (Counts 1 through 4) and three (Counts 2 through 4) concern this transaction exclusively.

representation to the owner of property; (2) with the intent to defraud the owner of that property; and (3) the owner transferred the property to the defendant in reliance on the representation." *People v. Carr*, Not Reported in Cal.Rptr.3d, 2007 WL 3299025 at 14. Those elements are a matter of state law—but the pressing issue of federal constitutional law here is the due process violation derived from the illicit means used to convince the grand jury there was evidence these elements existed.

Before the prosecutor ever called Ms. Guignet to testify before the grand jury, but after Ms. Guignet herself already had retained counsel to pursue claims against Alvin Cox (and Cox eventually chose to settle with her, assigning her the excess proceeds which she ultimately obtained from the tax sale), she was interrogated by investigators from the district attorney's office. She had every reason at that time to claim she had been lied to, and certainly had counsel to advise her of the value of such a claim if it were true. Yet when directly asked if she was lied to about "excess proceeds," she refused to say so. Rather, this exchange occurred:

> Leibrech [the investigator]: Did Mr. Cox at any time, when he was here, say that could be a possibility that there might be excess proceeds due you?
> Guigent: 'Might' fits—
> Liebrich: Okay, earlier you said that at no time he did.
> Guignet: No, no, he might have....

In other words, Ms. Guignet clearly, with counsel's advice, was not going to be committed to a claim that she was lied to, perhaps because she knew that silence was not a misrepresentation or because she knew that her prior recorded interview was contradictory, and that she and her nephew had already filed a claim for excess proceeds from the County of San Bernardino and were in the process of receiving those proceeds. She admitted, in a formal, recorded statement, that Justin might in fact have told her she might be able to get excess proceeds—though of course he had no way of knowing what those proceeds would be or even if they really would exist. Waiting for them would, at best, be a gamble—but Ms. Guignet admitted she might well have been informed of that gamble and been willing to take it.

Yet, after the prosecutor worked with her and presented Guignet to the grand jury, there was no hint of her honest admission that Justin Cox might have told her about excess proceeds. Not only did the prosecutor suppress this statement, which would have had the effect of completely exonerating all defendants (with no misrepresentation or even omission of key facts, there could be no crime), he knowingly solicited changed testimony from Ms. Guignet.

B. The Falsified Evidence Concerning the Guggiana Transaction (Counts 1 and 8)

The prosecutor also presented evidence to the grand jury that defendants purchased property from an individual named Shari Guggiana. At the time he did so, the prosecutor knew one key fact he chose to hide from the grand jury—Guggiana did not own the property in question. Title to the property was in the unprobated estate of Robert and Edna Glasband. The county tax deed from September 15, 2004—that is, even after the tax sales here—showed the Glasbands as the last assessed owners. The Notice of Power to Sell, dated October 12, 2004, gave the title owners' names as Robert and Edna Glasband. There was some testimony that the Glasbands had transferred the land to a trust; no such writing was produced and none has ever been recorded as required by the California Probate Code. In any case, no estate was opened in the names of Robert and Edna Glasband, and there could have been no sale of the estate's property unless approved by the court—something which still has not occurred. As of August 2004, the state, by way of the tax sale, transferred title to an individual by the name of David Alfonso.

Guggiana, therefore, had no power to convey the property in an unprobated estate. Both the title company and the tax collector's records would have revealed as much. So instead of Justin Cox "defrauding" Guggiana by purchasing real estate going under the tax auctioneer's hammer without informing her of the possibility of excess proceeds,

Guggiana sold something for which she had no legal title.

The trial court did not address the facial validity of Guggiana's deed, but instead argued it made no difference because by delivering a grant deed to defendants, any after-acquired title they received would have passed to them. While defendant contends that assessment is not an accurate reading of the principles of California law, since the county sold the property to a third party, it is irrelevant to the crime charged here. (In fact, it is not an accurate statement of California law—the deed did not comply with the requirements of probate and therefore the deed was void and unenforceable. See *Kier Corp. v. Treasure Oil Co*, .57 Cal. App.2d 148, 91 P.2d 126 (1939)). At the time of the tax sale, when the "Guggiana" property was auctioned away, Guggiana had no legal title, and petitioner and his co-defendants acquired no right to obtain such excess proceeds. The excess proceeds belonged to the estate or the trust. Since the property was already in the midst of the auction process, there never would be, nor could be, any after-acquired title to transfer at a later date, even if that were permissible at law. As for the excess proceeds, the estate's (or the trust's) distribution of those funds would go to the estate's or the trust's beneficiaries. Petitioner and his co-defendants did not "buy" the right to this distribution.

In other words, when the prosecutor allowed Guggiana to falsely claim she was the owner in trust, the prosecutor knew this lie

clearly would make a difference to the grand jury. This was not merely a decision not to produce exculpatory evidence, but a decision to present a false case to the grand jury.

C. The Falsified Case Concerning the Watts Transaction (Counts 6 and 7)

The evidence the prosecutor chose not to share about the transaction between petitioner and his co-defendants and Emmett Watts was exculpatory in a number of ways, but in one key way, the prosecutor knowingly chose to present a false case. Among the many items of exculpatory evidence were the facts that all eight properties Watts owned were heavily encumbered not only by tax liens but overdue association dues and large deeds of trust in excess of $330,000. The properties were so encumbered that the liens far exceeded any potential value. The key fact, though, that the grand jury did not hear was this: After Watts took $10,000 from the petitioner and his co-defendants, allegedly to sell them his rights in the property, which after the tax sale was reduced to nothing more than a right to collect excess proceeds, Watts himself made a claim for and received those very proceeds.

Hiding this fact—that the alleged "thieves" received nothing, but instead were out $10,000, and the alleged victim kept what was supposedly taken from him—meant the prosecutor knowingly presented an entirely false case to the grand jury.

## II. A PROSECUTOR'S KNOWING SUBVERSION OF THE EVIDENCE PRESENTED TO A GRAND JURY UNDERMINES THE ACCUSATORY FUNCTION AND VIOLATES DUE PROCESS

While it is true that the Due Process Clause of the Fourteenth Amendment does not require states to use grand juries, when and if they do so, that grand jury must comport with the basic principles of due process. See *Rose v. Mitchell*, 443 U.S. 545, 557, n.7 (1979)("The fact that there is no constitutional requirement that States institute prosecutions by means of an indictment returned by a grand jury, does not relieve those States that do employ grand juries from complying with the commands of the Fourteenth Amendment in the operation of those juries (citations omitted).")

In fact, this Court, in *Hurtado v. California*, 110 U.S. 516, 538 (1884), found that States may use alternatives to a grand jury to charge crimes, but also emphasized that, however a State chooses to initiate criminal proceedings, it must do so with due concern for a method of "certifying to the probable guilt of the defendant," and the State must make sure its method "carefully considers and guards the substantial interest of the prisoner." Thus, as Justice Stevens wrote in his dissent in *Albright v. Oliver*, 510 U.S. 266, 292 (1994),

> While the Due Process Clause does not compel the States to proceed by way of grand jury indictment when they initiate a prosecution the federal guarantee was preserved by California's requirement

> that a magistrate certify 'to the probable guilt of the defendant'... I would hold that Illinois may dispense with the grand jury procedure only if the substance of the probable-cause requirement remains adequately protected.

Probable cause must, however, be based on legitimate, not falsified evidence.

When the prosecutor's misconduct undermines the integrity of this accusatory process, due process is violated. There is error of constitutional magnitude in this accusatory process wherever the "structural protections of the grand jury have been so compromised as to render the proceedings fundamentally unfair, allowing the presumption of prejudice" to the defendant. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 257 (1988) (citing *Rose v. Clark*, 478 U.S. 570, 577-78 (1986)). A constitutional violation exists where a defendant can show a history of prosecutorial misconduct that is so systematic and pervasive that it affects the fundamental fairness of the proceeding or if the independence of the grand jury is substantially infringed. *Nova Scotia*, 487 U.S. at 257, 108 S.Ct. at 2374-76.

One form of prosecutorial misconduct that seems to clearly undermine the fundamental fairness of the grand jury proceeding is the prosecutor's conscious use of falsified evidence. In fact, some lower courts have, on occasion, recognized that a prosecutor's knowing presentation of false evidence to a grand jury violates the due process rights of the targets of

that falsification, as well as subverting the institution of grand juries. A few decades ago, the United States Court of Appeals for the Ninth Circuit articulated this position clearly in *United States v. Basurto*, 497 F.2d 781 (9th Cir. 1974). There, defendants had been convicted of conspiracy to import and distribute marijuana, but the Court of Appeals reversed, finding that the defendants' right to due process was violated where the defendants had to stand trial on an indictment which the government knew was based partially on perjured testimony. One of the defendants' alleged co-conspirators testified to the grand jury about the defendants' alleged activities. However, before the trial began, that co-conspirator, Barron, told the Assistant United States Attorney prosecuting the case that he had lied to the grand jury about what he knew the defendants had done before May 1, 1971, a date which was significant because that was the date when 21 U.S.C. § 176a was repealed by the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91-513, 84 Stat. 1236, 21 U.S.C. § 801 et seq. Persons convicted of narcotics offenses under 21 U.S.C. § 176a were subject to a mandatory minimum sentence of five years, while those convicted under the new statute were not subject to such inflexible sentencing. Even though there was one other witness, a customs agent, who may have testified about defendants' actions before May 1, 1971, the court stated that:

> It is not necessary that the dispute be resolved, since it does not affect the holding of this court. The issue here is not one relating to the sufficiency of

> evidence before a grand jury to sustain an indictment, but rather, the duty of a prosecutor when he becomes aware that perjury as to a material matter has been committed.

Id. at n.1. Even though the prosecutor told opposing counsel and admitted to the trial jury that Barron perjured himself, he failed to inform either the court or the grand jury. The Ninth Circuit held the perjury was material and furthermore, "the Due Process Clause of the Fifth Amendment [applicable to federal prosecutions] is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached." Id. In so holding, the court explained that:

> Today, the grand jury relies upon the prosecutor to initiate and prepare criminal cases and investigate which come before it. The prosecutor is present while the grand jury hears testimony; he calls and questions the witnesses and draws the indictment. With that great power and authority there is a correlative duty, and that is not to permit a person to stand trial when he knows that perjury permeates the indictment.
> At the point at which he learned of the perjury before the grand jury, the prosecuting attorney was under a duty to notify the court and the grand jury, to

> correct the cancer of justice that had become apparent to him. To permit the appellants to stand trial when the prosecutor knew of the perjury before the grand jury only allowed the cancer to grow.

Id. at 785. Many other courts followed the Ninth Circuit's lead. See, e.g., *United States v. Ciambrone*, 601 F.2d 616 (2d Cir. 1979); *United States v. Smith*, 552 F.2d 257 (8th Cir. 1977); *United States v. Guillette*, 547 F.2d 743 (2d Cir. 1976), cert. denied, 434 U.S. 839, 98 S.Ct. 132, 54 L.Ed.2d 102 (1977); *United States v. Goldman*, 451 F.Supp. 518 (S.D.N.Y.), aff'd, 573 F.2d 1297 (2d Cir. 1978); *United States v. Gallo*, 394 F.Supp. 310 (D.Conn.1975).

Furthermore, some lower courts have recognized that prosecutorial misconduct of this sort not only is a violation of due process in the context of the constitutionally mandated federal grand jury but also in the context of grand juries convened by the states. Thus, for example, in *Panther v. Hames*, 991 F.2d 576, 582 (9th Cir. 1993), the Ninth Circuit applied the same standard for constitutional error to prosecutorial misconduct before a grand jury convened by the state of Alaska—whether the " 'structural protections of the grand jury have been so compromised as to render the proceedings fundamentally unfair, allowing the presumption of prejudice' to the defendant" or when the "defendant can show a history of prosecutorial misconduct that is so systematic and pervasive that it affects the fundamental fairness of the

proceeding or if the independence of the grand jury is substantially infringed."

If the situation presented in *Basurto* revealed a "cancerous tumor" on justice, the situation in the instant case shows that tumor metastasizing to something much more malign and advanced. In *Basurto* there was no evidence that the prosecutor knew he was presenting perjury during the grand jury's taking of testimony, and further, the prosecutor admitted the perjury to opposing counsel and the trial jury. The prosecutor's only failing was insufficient efforts to remedy an error he did not know was being committed at the time. Here, though the prosecutor not only knew of the falsified evidence being presented to the grand jury, the most likely inference is that the prosecutor exerted his influence to make sure the grand jury heard a story that the prosecutor knew was false. For instance, the prosecutor knew about the significant changes in Guignet's testimony. The prosecutor must have known that he was presenting false evidence about who owned the properties in question. The evidence, so falsified, lies at the heart of the indictment. But for the falsified evidence, the elements of the charge could not have been established.

## III. There Is Substantial Confusion in the Federal and State Courts Concerning The Effect of a Prosecutor's Knowing Subversion of the Evidence Before the Grand Jury

Given the obvious need to protect the fundamental fairness of the grand jury or other

accusatory process used, it is striking that no decision from this Court exists definitively evaluating the effect of such a malignant growth on the body of justice in regard to due process, especially due process as it arises under the Fourteenth Amendment, applicable to the states. Still, while it is true that due process does not require states to use grand juries to initiate criminal proceedings, it must be true that however a state initiates criminal proceedings, it cannot consciously rely on falsified evidence to do so. It therefore is up to this Court to resolve this basic, yet surprisingly unresolved, question.

Indeed, even the question addressed in *Basurto*—the effect of perjury on federal indictments—is not clearly resolved. Several other courts followed *Basurto*. See, e.g., *United States v. Ciambrone*, 601 F.2d 616 (2d Cir. 1979); *United States v. Smith*, 552 F.2d 257 (8th Cir. 1977); *United States v. Guillette*, 547 F.2d 743 (2d Cir. 1976), cert. denied, 434 U.S. 839, 98 S.Ct. 132, 54 L.Ed.2d 102 (1977); *United States v. Goldman*, 451 F.Supp. 518 (S.D.N.Y.), aff'd, 573 F.2d 1297 (2d Cir. 1978); *United States v. Gallo*, 394 F.Supp. 310 (D.Conn.1975). Other courts questioned the holding in *Basurto* from the start. See *United States v. Cathey*, 591 F.2d 268, 271-72 (5th Cir. 1979); *Talamante v. Romero*, 620 F.2d 784, 790 n.7 (10th Cir.), cert. denied, 449 U.S. 877 (1980). Still others have erroneously believed this Court's holding in *Williams*, 504 U.S. 36 (1992)—that judicial supervisory power over grand juries does not include the power to create procedural rules requiring prosecutors to disclose exculpatory evidence to a grand jury—somehow abrogated *Basurto's* holding. On the other hand, many

courts have continued to recognize the vitality of *Basurto* and the need to apply the fundamental principles of due process to evaluate tainted grand jury proceedings. See, e.g., *United States v. Fuchs*, 218 F.3d 957 (9th Cir. 2000)(noting intentional presentation of false evidence or intentional actions by prosecutor to mislead grand jury in a material way renders the indictment subject to dismissal).

In so doing, these courts not only recognize the ongoing vitality of *Basurto*, but also are recognizing that, "Where prosecutorial misconduct infringes the grand jury's independent judgment, the indictment cannot stand." *United States v. DeRosa*, 783 F.2d 1401, cert. denied 477 U.S. 908 (1986). After all, "When the prosecutor manipulates the array of evidence to the point of depriving the grand jury of independence and impartiality, the courts should not hesitate to vindicate the demands of due process." *People v. Backus*, 23 Cal. 3d 360, 392 (Cal. 1979).

This Court's decision in *United States v. Williams*, 504 U.S. 36 (1992) did not address the sort of serious misconduct that this case reveals, but unfortunately it appears to have confused many lower courts as to its scope and application. In *Williams* this Court addressed only the issue of whether the courts have a supervisory power over grand juries that extends to requiring prosecutors to disclose exculpatory evidence in a way similar to their disclosure of such evidence to the defense under the rule of *Brady v. Maryland*, 373 U.S. 83 (1963). The Court clearly explained it was not addressing the demands of Due Process but only the matter of judicial supervisory power over the grand jury. While that supervisory power does

not extend to overseeing whether a prosecutor discloses any and all evidence that might be exculpatory, nothing in *Williams* undercuts the holding from *Bank of Nova Scotia* that the supervisory power can be used to dismiss an indictment because of misconduct before the grand jury where that misconduct amounts to a violation of one of those "few, clear rules which were carefully drafted and approved by this Court and by Congress to ensure the integrity of the grand jury's functions." *United States v. Mechanik*, 475 U.S. 66, 74(1986) (O'Connor, J., concurring in judgment). Similarly, nothing in *Williams* could be read to jettison the fundamental requirements of due process.

Such due process "...presupposes an investigative body 'acting independently of either prosecuting attorney or judge '...." *United States v. Dionisio*, 410 U.S. 1, 17-18 (1973) (emphasis added) quoting *Stirone v. United States*, 361 U.S. 212, 218 (1960), and quoted in turn in *Williams* at 49. Although the grand jury is not required, constitutionally, to be presented a balanced look at the evidence, it is surely incumbent for the prosecutor presenting that evidence to present an honest look. "Historically, this body [the grand jury] has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will." *Wood v. Georgia*, 370 U.S. 375, 390 (1962). After all, the grand jury is not

merely an accusatory body; it also serves as a "protector of citizens against arbitrary and oppressive governmental action." *United States v. Calandra*, 414 U.S. 338, 343 (1974). The integrity and independence of the grand jury can be subverted by "the countless forms of prosecutorial misconduct that may occur inside the secrecy of the grand jury room," *Williams*, 504 U.S. at 62 (Stevens, J. dissenting) and when such misconduct involves willful presentation of false evidence to the grand jury, can destroy all pretense to due process in the indictment process.

There is a long line of cases recognizing the existence of a duty of good faith on the part of the prosecutor with respect to the court, the grand jury, and the defendant. These cases all suggest an indictment must be dismissed where the prosecutor has knowledge that testimony before the grand jury was perjured—where that testimony clearly was material to the return of the indictment and any finding of probable cause that a crime was committed. In *Napue v. Illinois*, 360 U.S. 264, 269 (1959) this Court reaffirmed the principle stated in many of its prior decisions that "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." The Court reiterated 'the principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty . . . .' Id. See *Giles v. Maryland*, supra, at 74. The Court held in *Napue* that the prosecution's use of known

false testimony at trial required a reversal of the petitioner's conviction. The same result must obtain when the government allows a defendant to stand trial on an indictment which it knows to be based in part upon perjured testimony or falsified evidence. The consequences to the defendant of falsified evidence given before the grand jury are no less severe than those of perjured testimony given at trial, and in fact may be more severe. The defendant has no effective means of cross-examining or rebutting perjured testimony given before the grand jury, as he might in court.

In *Mesarosh v. United States*, 352 U.S. 1, 77 S.Ct. 1, 1 L.Ed.2d 1 (1956), this Court stated that, "Fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted." Permitting a defendant to stand trial on an indictment which the government knows is based on falsified evidence cannot comport with this "fastidious regard for the honor of the administration of justice."

## CONCLUSION

In sum, the questions raised in this petition are important and unresolved. It would seem obvious that an accused is deprived of fundamental fairness, and therefore of due process, when he is indicted on the basis of evidence the prosecutor knew, or should have known, was false, and without which falsified evidence, the necessary elements of the crime are missing. The current state of the decisions in the

lower courts shows explicitly that there is no clear understanding that this is the case. Only an unambiguous statement by this Court and, in this case, a remand for the California Supreme Court to mandate that Justin Cox's indictment be dismissed to the extent the courts of California determine it was knowingly falsified, can end the confusion in the courts below, federal and state, and ensure due process is respected.

There is pressing and compelling need for this Court to provide definitive guidance concerning how far prosecutorial manipulation of the evidence presented to grand juries will be allowed to go before the courts may intervene to preserve fundamental fairness. In sum, the question raised in this Petition is important, unresolved, and compelling.

This petition for a writ of certiorari should, therefore, be granted.

Dated: August 17, 2009
Respectfully submitted.

Attorney of Record for Petitioner
David Placher, Esq.
15 West Biddle
Baltimore, MD 21201

**APPENDIX A**

Court of Appeal, Fourth Appellate District,
Division Two – Nos. E047857/E047859
S171576

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

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Justin Cox, Petitioner,

v.

SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent;

THE PEOPLE, Real Party in Interest
and consolidated case.

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The petitions for review are denied

GEORGE

CHIEF JUSTICE

**APPENDIX B**

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

JUSTIN COX
Petitioner
v.
THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,
Respondent
THE PEOPLE,
Real Party in Interest

E047857

(Super.Ct.No.
FSB051477)

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ALVIN COX,
Petitioner,
THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY
Respondent;
THE PEOPLE,
Real Party in Interest

---

THE COURT

The request for judicial notice filed by Alvin Cox is GRANTED. The petitions for writ of mandate filed by Alvin Cox and Justin Cox are denied.

_____
Acting P. J.

Cc: See attached list

**APPENDIX C**

Superior Court of California
County of San Bernardino
351 N. Arrowhead Avenue, Dept S-19
San Bernardino, California 92415-0240

SUPERIOR COURT OF CALIFORNIA
COURNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

| | |
|---|---|
| PEOPLE OF THE STATE OF CALIFORNIA<br><br>vs.<br><br>JOHN ALLEN CARR,<br>RANDI FJAERAN,<br>ALVIN COX,<br>JUSTIN COX<br><br>Defendant, | Case No. :<br>FSB 051477<br><br>Plaintiff,<br><br>DECISION RE :<br>SUBMITTED ISSUES<br>on PC § 995, ETC. |

THIS CASE CAME ON REGULARLY FOR HEARING on February 20, 2009, in Department 819 of the above-entitled court, the Honorable Michael A. Smith, judge presiding.

People appeared by James R. Secord, Deputy District Attorney.

Defendant John Allen Carr appeared by his attorney, Paul Pfingst, Attorney at Law.

Defendant Randi Fjaeran appeared by her attorney C. Bradley Patton, Attorney at Law.

Defendant Alvin Cox appeared by his attorney, Harland W. Braun by Lance Dacre, Attorney at Law.

Defendant Justin Cox appeared by his attorney, M.J. De La Pena, Attorney at Law.

Procedural History:

A Grand Jury indictment charging all 4 defendants with 27 felony counts was filed on August 1, 2005. Subsequently, this Court granted a PC §995 motion to dismiss all counts as to Defendant Fjaeran, and all counts except a single conspiracy count against the remaining 3 defendants.

Upon the People's appeal, the Court of Appeal reversed the granting of the PC §995 motion to dismiss as to 7 of the substantive counts that this court dismissed against the remaining 3 defendants, and reversed the dismissal of the conspiracy count and 2 of the substantive counts against Fjaeran. An amended indictment charging the counts reinstated by the Court of Appeals was filed on April 11, 2008.

Defendants now bring a new PC §995 motion to dismiss the remaining counts on the grounds of failure of the prosecution to present mitigating evidence (PC §939. 71), and presentation of incompetent or inadmissible evidence (PC §939.6-7).

Following a hearing and oral argument on February 20, 2009, the court denied defendant's renewed PC §995 motions to dismiss. The court, however, took 2 issues raised in the PC §99S motions to dismiss under submission: (1) Count B, the Guggiana transaction; and (2) All charges relating to Defendant Fjaeran.

After further review, the court now renders its decision on these remaining issues of defendants PC §995 motion to dismiss.

Discussion:

I. Count 8

Defendants, and apparently Mr. & Mrs. Guggiana, believed that the Guggiana's owned certain real property in Victorville. In fact, the property was held in a trust, and Mr. & Mrs. Guggiana were the beneficiaries of the trust. So, while they did not hold legal title, they did have an equitable interest in the property.

Defendants argue that since the Guggiana's were not the legal owners of the property, they could not legally convey the property to the defendants. Therefore, defendants argue, there can be no theft of this property because the property in fact was never legally conveyed to the defendants.

California Civil Code section 1106 provides:

> Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

A grant deed therefore transfers any after-acquired title. A deed effectively conveys both the then-equitable interests of the grantor .... and their after-acquired legal title. Klamath Land & Cattle Co. v. Roemer (1970) 12 Cal App 3d 613; Warburton v. Kjeferle (1955)135 Cal App 2d 278.

This rule expressly applies to property subject to probate administration. When a person who is a beneficiary of a probate administration conveys property that is still subject to probate administration to another, the conveyance effectively transfers the current equitable title, as well as the subsequently acquired legal title to the grantee. Kuenzel v. Grettenberg (1948) 88 Cal App 2d 656.

No authority has been cited to suggest a different result for property held in trust. Nor is there any logical reason for a different result for property held in trust, given the all inclusive language of CC §1106. Indeed, CC §1106 even applies to a situation where a grantor of property has no interest whatsoever in the property when he conveys it to another, If he subsequently obtains title to the property, CC§1100 operates to transfer his after acquired title to his grantee. Maxwell v. Carlon (1939) 30 Cal App 2d 356

For all of the above reasons, the court finds that the fact the property in question in count 8 was held in trust, rather than outright by the Guggiana's, is not a bar to prosecution for theft of the property from the Guggiana's.
Accordingly, the PC§995 motion to dismiss count 8 is denied.

**II. Defendant Fjaeran**

Defendant Fjaeran did not have any contact with any of the owners of the subject properties, and therefore was not directly involved in making any representations to any of the owners of the subject properties. She is, however, alleged to have acted together with the other defendants in a "scheme" or conspiracy to obtain properties subject to tax auctions for the purpose of obtaining excess proceeds from the tax sales.

The Court of Appeal explained the evidence supporting the allegations against Ms. Fjaeran as follows:

Fjaeran was the grantee of the Sampson property, which was acquired by the direct efforts of Justin and Carr. As such, she appeared to be in a position to claim up to $65,000 of excess proceeds for that property. After obtaining title to the Sampson property, Fjaeran thereafter engaged in a two-person online bidding war for the property, effectively increasing the amount of the excess proceeds that she would receive from the high bidder. Although bidding for the property, by itself, is not improper, such bidding, immediately after acquiring the deed from Sampson, is consistent with the People's theory that the purpose of the conspiracy was to obtain excess proceeds; the larger the amount of excess proceeds, the more money for the conspiracy participants. Fjaeran's bidding conduct certainly advanced this goal and appears to be otherwise inexplicable: If Fjaeran intended to actually purchase the property at the auction, there would be no point in acquiring the property from Sampson beforehand; Fjaeran would simply make the highest bid and obtain the deed from the tax

collector. The combination of Carr's last minute acquisition of title from Sampson and the subsequent bidding activity strongly suggests that Fjaeran acquired title to the Sampson property, through the efforts of her compatriots, and sought to increase the amount of excess proceeds by bidding up the property. Such conduct supports an inference that she is a participant in the conspiracy.

In addition to her involvement in the Sampson transaction, Fjaeran apparently acted as a lender to Alvin and was in a position, as the beneficiary of a deed of trust, to receive the excess proceeds on the sale of properties formerly belonging to Watts. It is possible that Fjaeran merely acted as financier of the transaction. However, the amount purportedly secured by the deed of trust far exceeds the amount paid by Alvin for the Watts properties. While Alvin paid $10,000 to buy Watts's eight properties, the deed of trust from Alvin to Fjaeran purports to secure a $140,000 debt. Fjaeran would thus receive up to $140,000 of excess proceeds ahead of Alvin, the new owner of the properties. Even if the purported obligation is legitimate, Alvin's grant to Fjaeran of a superior position with respect to the recovery of fraudulently obtained profits strongly suggests that her role is something more than the conspirators' banker.

Fjaeran was also involved in the DeGraffenreid transaction. Both she and Carr bid for the property after Justin obtained title to the property (in Alvin's name). Although Carr made the highest bid, he did not pay for the property. Such conduct suggests that neither Carr nor Fjaeran had any intention of purchasing the

property by their bids and merely sought to increase the amount of excess proceeds available to Carr (as the beneficiary of a deed of trust on the property) and Alvin (the owner). Again, while bidding on the property to increase the amount of excess proceeds is not a crime, the bidding activity by Fjaeran on property that is the object of a conspiracy, together with other evidence of the relationship with, and the activities of, the other defendants, is circumstantial evidence that she was a part of the conspiracy.

Defendant asserts several inaccuracies in the testimony of investigator Liebrich, and the failure of the prosecution to present correct or exculpatory evidence undermine any basis to support a criminal charge against Fjaeran.

In order for a failure to present exculpatory evidence to result a dismissal of the charges the alleged exculpatory evidence must be of such a nature as "reasonably tends to negate guilt." Page v. Superior Court (1979) 90 Cal.App.3d 959.

Investigator Liebrich testified that defendant John Carr admitted he purchased the Sampson property for Fjaeran and put the property in her name, and that Fjaeran supplied the money for that specific purchase, and that Fjaeran knew of that specific transaction.

John Carr did admit to purchasing the Sampson property in Fjaeran's name, and did indicate that Fjaeran's money was used for the transaction.

However, Carr indicated that Fjaeran did not know of that specific transaction, did not know he was putting the property in her name, and that the money, although Fjaeran's, was not for that specific transaction. However, he

also indicated that Fjaeran then deeded the property back to him. Carr stated:

*I bought it in Randi's [Fjaeran] name. The money (was using was Randi's money.*

Q: Did she know you did that?

*A: She didn't know that I was going to buy it in her name, no.*

Q: But she knew you were going to buy [the] property?

*A: Well, she knows I buy property all the time....*

*Poor Randi . .... She'll probably kick me out. ....*

*And, I didn't . .... She didn't know it. I just put it in there ..... you know . ... I swear.*

*I wish I hadn't because I am not supposed to put anything in her name without her*

*Consent ..... .*

*I can't believe Randi's going to jail because I put her name on the papers ...*

Investigator Liebrich also testified that Fjaeran loaned money to Defendant Cox for the specific purpose of purchasing tax delinquent property in San Bernardino. This is not precisely correct.

Fjaeran indicated she did loan money to Carr and Cox during 2004 for real estate Investments/purchases generally; but she was unaware of any of the specific transactions. And that she had already been paid back for those loans, one being $75,000.00, and one being $15,000.00.

Fjaeran further indicated she had previously had a bad experience dealing with

purchasing property at tax sales in order to collect excess proceeds that resulted in a lawsuit. As a result, she no longer participates in tax sale purchases to Obtain excess proceeds.

While it is true the people are not required to present self serving exculpatory statements of a defendant denying participation in the alleged criminal acts (People v. Caldwell (1980) 102 Cal.App.3d 461), when the people present evidence of the nature of certain financial transactions, they do have a duty to accurately portray the nature and context of the transaction.

The question presented, then, is whether the inaccurate/excluded evidence, in proper context, reasonably tends to negate guilt as to Fjaeran.

The fact that Fjaeran was loaning money to the defendants for real estate transactions generally, her name was put on at least one of the deeds of the purchased property, which she than deeded back to one of the other defendants, and she was the beneficiary of another trust deed of one of the other subject properties, combined with her participating in the bidding on some of the subject properties, certainly supports an inference that she was engaged with the other defendants to obtain properties that were to be sold at the auction for the purpose of subsequently obtaining excess proceeds from the tax sale, and even engaged in bidding on the properties to drive up the sales price, thereby creating greater excess proceeds.

However, this activity, standing alone, is not criminal. The gravamen of the criminal accusation in this case is not that the defendants obtained property for the purpose of obtaining excess

proceeds at a tax sale, because that is not a criminal offense, but that they obtained the property by making false and misleading statements to the owners of the property, who relied on those statements, and who were thereby fraudulently induced to convey their property to the defendants.

Fjaeran did not have any contact with any of the owners of the subject property, so she did not make any representations to any of the owners to induce them to convey property. In order for her to be criminally liable for the fraudulent misrepresentations of the other defendants, there has be some evidence to support the inference or conclusion that she knew her co-defendants would resort to fraudulent misrepresentations to the owners to induce them to convey their property to them so they could obtain excess proceeds. Without such knowledge, her participation in a plan to obtain properties that were scheduled to be sold at tax auction, for the purpose of obtaining excess proceeds from the tax sale, is not criminal even her participation in bidding on the property to increase the ultimate sales price, and thereby increase the amount of excess proceeds, without such knowledge the properties were being obtained by fraudulent misrepresentations, is not criminal.

The court finds that the discrepancies described above between what Investigator Liebrich testified to the Grand Jury regarding the statements of defendants Carr and Fjaeran and what the actual statements of the defendants to Liebrich were, significantly lessens the Inference that Fjaeran had any knowledge of the fraudulent

tactics that were being employed by the other defendants to obtain the properties in the first instance. As such, the court finds these discrepancies reasonably would tend to negate the inference of guilt necessary for defendant Fjaeran.

For all of these reasons, the court therefore grants defendant Fjaeran's PC §995 motion to dismiss the charges against her.

Dated this February 23, 2009

MICHAEL A. SMITH
Judge of the Superior Court

**APPENDIX C**

**IN THE CASE OF**
**THE PEOPLE OF THE STATE OF CALIFORNIA,**
**Plaintiff**

**V.**

**JOHN CARR et al.,**
**Defendants**

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**Case No. FSB51477**
**(Super.Ct.No.)**

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO**

**CENTRAL DISTRICT – DEPT. S19**

**THE HONORABLE JUDGE MICHAEL A. SMITH PRESIDING. COURT CLERK: KC-KIM CALLIHAN. REPORTED BY THERESA WOLF, CSR# TW-6024.**

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**Minute Order Dated 2/20/09**

Case FSB051477 Defendant 2041933 COX, JUSTIN

Action: DISPO/RESET Date: 02/20/2009 Time: 9:30 AM
Division: S19 Hearing Status: DISPOSED

MICHAEL A SMITH
CLERK: KC-KIM CALLIHAN
CERTIFIED COURT REPORTER: TW-THERESA WOLFE CSR# TW-6024
BAILIFF M SIEDLE
-
APPEARANCES
DEPUTY DISTRICT ATTORNEY JAMES SECORD PRESENT.
ATTORNEY M J DELAPENA PRESENT.
DEFENDANT PRESENT NOT IN CUSTODY.
-
PROCEEDINGS
ACTION COMES ON FOR DISPO/RESET
-
DISCOVERY ISSUES DISCUSSED ON THE RECORD RE GRAND JURY TRANSCRIPTS THE COURT WILL MAKE AN ORDER FOR THE COURT REPORTER(S) OF THE GRAND JURY PROCEEDINGS TO PROVIDE TRANSCRIPTS OF ALL PROCEEDINGS TO ALL COUNSEL *AT EACH COUNSEL(S) EXPENSE FOR TRANSCRIPTS*
**DEFENSE COUNSEL(S) TO PREPARE THE ORDER FOR FILING WITH THE COURT

FURTHER DISCOVERY ISSUES DISCUSSED ON THE RECORD
MOTIONS
DEFENSE MOTION TO DISMISS PURSUANT TO PC995 IS DENIED WITH THE EXCEPTION OF COUNT 8 WHICH IS TAKEN UNDER SUBMISSION. THE COURT WILL PROVIDE

COUNSEL WITH A WRITTEN DECISION WITHIN 30 DAYS.
HEARINGS
JURY TRIAL SET FOR 06/08/2009 AT 8:30 IN DEPARTMENT S19; ESTIMATED 0 DAYS.
TRIAL READINESS SET FOR 06/05/2009 AT 8:30 IN DEPARTMENT S19.
MOTION TO SEVER AND
-
TIME WAIVERS
TIME WAIVED FOR TRIAL; PLUS 60 DAYS.
TIME WAIVED TO 08/07/2009.
SET LAST DATE FOR TRIAL TO 08/07/2009.
-
CUSTODY STATUS
CASE CUSTODY- PROPERTY BOND